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KATHLEEN VICTORY*
HOWARD M. WEISS
* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.
ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400
TELECOPIER
(703) 812-0486
INTERNET
HILDRETH@ATTMAIL.COM

ROBERT L. HEALD
(1956-1983)
PAUL D.P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)
RETIRED
EDWARD F. KENEHAN
FRANK U. FLETCHER
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
WRITER'S NUMBER
(703) 812-
0415

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BY HAND DELIVERY
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket Nos. 91-221, 87-8
Television Ownership Rules

Dear Mr. Caton:

Transmitted herewith on behalf of Communications Corporation of America are an original and four (4) copies of its Comments in the above-referenced consolidated proceeding.

Should any question arise concerning this matter, please communicate with this office.

Very truly yours,

FLETCHER, HEALD & HILDRETH, P.L.C.

Patricia A Mahoney

Patricia A. Mahoney
Counsel for
Communications Corporation of America

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

Directed To: The Commission

COMMENTS

COMMUNICATIONS CORPORATION
OF AMERICA

Vincent J. Curtis, Jr.
Patricia A. Mahoney
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street, 11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

Its Attorneys

May 17, 1995

BEFORE THE

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WASHINGTON, D.C. 20554

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COMMENTS

SUMMARY

Communications Corporation of America ("CCA") herein respectfully submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995), in the above-captioned consolidated proceeding. CCA is the successor in interest to Associated Broadcasters, Inc., and Galloway Media, Inc. (collectively, "Galloway"), which participated in the comment and reply comment stages of MM Docket No. 91-221. In the nearly three years that have elapsed since Galloway filed its Comments in Docket 91-221, CCA and its stations have faced steadily increasing competition for advertisers, audiences, and programming. Dramatic technological and marketplace changes have resulted in increased competition and diversity at an even faster pace than Galloway predicted in 1992.

Based on the experience of CCA and its affiliated companies operating television and radio stations in varying market sizes and their experience with the current problems and economic conditions affecting the broadcasting industry, CCA

urges the Commission to amend its local ownership rule. Such action is critical to the future of television broadcasting, particularly to the continued survival of UHF television licensees. CCA also supports elimination of the radio television cross ownership prohibition.

As demonstrated herein, the Commission's current local ownership rule for television and its one-to-a-market rule no longer serve the purposes for which they were adopted, i.e., to foster competition and enhance diversity, and now actually frustrate those objectives, while at the same time diverse alternative media enjoy explosive growth and development unfettered by ownership restrictions or substantial regulation. The changes proposed by CCA will enhance, not endanger, competition and diversity, enabling television and radio licensees to strengthen their competitive positions through combined resources and diversified program offerings.

CCA asks the Commission to recognize, as it has with respect to radio local marketing agreements and time brokerage agreements (collectively referred to herein as "LMAs"), that LMAs involving television stations serve the public interest and may be continued. CCA urges the Commission to permit and encourage separately owned and licensed television stations, consistent with the requirements of the antitrust laws, to enter into joint ventures and other cooperative arrangements, including time brokerage, program affiliation, and simulcast agreements. The Commission's complaint procedures are adequate to monitor whether or not the stations involved are serving the public interest. All existing LMAs should be grandfathered and assignable. Also, such agreements should not be attributable.

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Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

Directed To: The Commission

COMMENTS

Communications Corporation of America and its subsidiaries ("CCA"),[1] by its attorneys, hereby respectfully submit Comments in response to the Further Notice of Proposed Rule Making ("FNPRM"), FCC 94-322 (released January 17, 1995), in the above-captioned consolidated proceeding:

I. Introduction

CCA is the successor in interest to Associated Broadcasters, Inc., and Galloway Media, Inc. (collectively, "Galloway"), which participated in the comment and reply comment stages of MM Docket No. 91-221. In the nearly three years that have elapsed since Galloway filed its Comments in Docket 91-221, CCA and its stations have faced steadily increasing competition for advertisers, audiences, and programming. Dramatic technological and marketplace changes have resulted in

[1]CCA owns and controls the licenses of KPEJ-TV, Odessa, Texas, KWKT-TV, Waco, Texas, KVEO-TV, Brownsville, Texas, KMSS-TV, Shreveport, Louisiana, and WGMB-TV, Baton Rouge, Louisiana.

increased competition and diversity at an even faster pace than Galloway predicted in 1992.

CCA incorporates the 1992 Comments of Galloway in MM Docket No. 91-221 by reference herein. Rather than restate its positions, CCA offers further comments on these issues: the local ownership (duopoly) rule; the radio-television cross ownership (one-to-a-market) rule; and local marketing agreements.

Based on the experience of CCA and its affiliated companies operating television and radio stations in varying market sizes and their experience with the current problems and economic conditions affecting the broadcasting industry, CCA urges the Commission to amend its local ownership rule. Such action is critical to the future of television broadcasting, particularly to the continued survival of UHF television licensees. This needed revision to the Commission's television ownership rules has the support of Congressional leaders who have introduced legislation that would mandate such a change.[2] CCA also supports elimination of the radio television cross ownership prohibition. Finally, the time has come for the Commission to recognize, as it has with respect to radio local marketing agreements and time brokerage agreements (collectively referred to herein as "LMAs"), that LMAs involving television stations serve the public interest and may be continued.

As demonstrated herein, the Commission's current local ownership rule for television and its one-to-a-market rule no longer serve the purposes for which they

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[2] See H.R. 1556, introduced in the House of Representatives on May 3, 1995, by Congressmen Stearns, Bliley, Fields, Schaefer, Oxley, White, Gillmor, Hastert, Klug, and Hall.

were adopted, i.e., to foster competition and enhance diversity, and now actually frustrate those objectives, while at the same time diverse alternative media enjoy explosive growth and development unfettered by ownership restrictions or substantial regulation. The changes proposed by CCA will enhance, not endanger, competition and diversity, enabling television and radio licensees to strengthen their competitive positions through combined resources and diversified program offerings.

II. Then and Now

The Commission's local ownership rule was adopted over 30 years ago to promote the maximum diversity of program service and viewpoints and to prevent undue concentration of economic power. See Amendment of Sections 73.35, 73.240 and 73.636 (1964 Ownership Report and Order), 45 F.C.C. 1476 (1964). As can be seen in the chart below, the number of broadcast stations providing television programming today, according to the FCC's own statistics,[3] **is more than double the number that were providing such services in 1964**:

	1964	1995	% Increase
Commercial TV	582	1,165	100%
Noncommercial TV	79	364	361%
TV Translators	1,415	4,664	230%
Low Power TV	0	1,616	1,616%

It should also be noted that in 1964 there were only three television networks, with no realistic probability of a fourth network in sight. Today, of course, there are seven

[3]For 1964, statistics were taken from the Commission's Annual Report for Fiscal Year 1964. For 1995, statistics were taken from the "Broadcast Station Totals As Of March 31, 1995" press release issued by the Commission on April 19, 1995.

networks, including FOX, PBS, and the two new United Paramount Network (UPN) and Warner Brothers (WB) network services.

Today's local television stations face tremendous competition from television, radio, newspapers, and services and sources never even contemplated in 1964. More importantly, there is no question that the future offers an unimaginable selection of video programming (entertainment and non-entertainment) sources to the consumer at the local level as well as the national level. As recognized by the FCC's staff four years ago, in the Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, 6 FCC Rcd 3996 (1991) ("OPP Paper"), the video marketplace is "highly competitive" and will only become more so. The number of television stations, particularly UHF stations, grew dramatically in the last decade,[4] as did the number of television signals available over the air in all markets.[5] By 1990, 94% of television households were in markets with five or more television stations available over the air. Additionally, television broadcasters were facing ever-increasing competition from other services, particularly cable.

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[4] In 1980, there were 734 television stations; in 1990, there were 1,093. The number of commercial UHF stations grew by 150% between 1980 and 1990. See Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996, 4011 & Table 3 (1991) ("OPP Paper").

[5] The number of off-air stations available to the median household increased from six in 1975 to ten in 1990. OPP Paper, 6 FCC Rcd at 3999.

When the OPP Paper was prepared, cable passed 90% of television households in the U.S.[6] By 1993, cable passed 96% of all television households.[7] In the Findings to the 1992 Cable Act, Congress found that "the cable television industry has become a dominant nationwide video medium." See Cable Television Consumer Protection and Competition Act of 1992, Sec. 2 (a)(3),106 Stat. at 1460 (1992) (hereinafter "1992 Cable Act"). Congress also specifically found:

> "(13) As a result of the growth of cable television, there has been a marked shift in market share from broadcast television to cable television services."

and

> "(14) Cable television systems and broadcast television stations increasingly compete for television advertising revenues. As the proportion of households subscribing to cable television increases, proportionately more advertising revenues will be reallocated from broadcast to cable television systems."

and

> "(18) Cable television systems often are the single most efficient distribution system for television programming." Id. at 1462.

In a recent publication of the Cable television Advertising Bureau (CAB), 1994 Cable TV Facts ("CAB Facts") at 6-7, the following statistics were reported:

- In 1994, Americans will spend almost $22 billion on cable programming, almost two-and-a-half times the 1985 level.

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[6] OPP Paper, 6 FCC Rcd at 3999-4001.

[7] See First Report in CS Docket No. 94-48, Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (1994 Video Competition Report), 9 FCC Rcd 7442, 7451 (1994).

- Total cable advertising revenues are expected to climb to $4.4 billion in 1994, a 359% increase since 1986.

- Cable penetration has reached 66% of all television homes, having grown 47% in only eight years.

- Cable penetration is projected to reach 72% by the year 2000.

- 95% of cable subscribers are able to receive 30 channels or more.

At the local market level, television broadcasters (which by FCC regulation can offer only a single channel of video program service) face an escalating threat from local multichannel competitors for the local ad dollar. **Unlike their multichannel competitors, the local single channel television broadcaster's only source of revenue is advertising.** Moreover, the multichannel video business, particularly the cable business, is undergoing a fundamental change, one that virtually guarantees that cable will garner an increasing share of local advertising revenues.

For years, cable's share of local advertising revenues has not grown as quickly as its rapidly increasing penetration and viewership because of the fragmentation of ownership in local markets. Increasingly, however, cable operators have been creating market-wide "interconnects," capable of offering local spots on all or nearly all of the cable systems in a market.[8] At the same time, driven by the additional incentive to compete with the phone companies and provide a seamless local

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[8]Exhibit 1 hereto is a listing of 180 such cable interconnects from the 1994 Cable TV Facts ("CAB Facts"), published by the Cabletelevision Advertising Bureau ("CAB").

telephone service,[9] cable operators have been "clustering" at a rapid pace, buying or trading cable systems so that they dominate local markets. Driven by interconnects and clustering, cable's share of local advertising revenues is rising rapidly, hitting $600 million in 1993, an increase of 80% from 1990, and is projected to rise at a comparable rate for the foreseeable future. With the pressure of competition from the phone companies, satellites, and wireless cable, and with regulation of subscriber rates, cable MSOs can be expected to accelerate both clustering and their efforts to target local advertising as a primary source of future revenue growth.

The OPP Paper also noted the increasing competition faced by television broadcasters from other video and information sources, such as wireless cable, low power television, motion pictures, video cassette recordings,[10] SMATV, and C-Band Satellites. These competing media sources do not face ownership restrictions such as are placed on television broadcasters. Moreover, competition has dramatically increased and diverse sources of programming have rapidly multiplied since the OPP Paper was prepared and released only four years ago.

For example, the OPP Paper was prepared before the initiation of high power direct broadcast satellite (DBS) service. This new service already provides new

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[9]See also, "Sprint, cable partners plan phone service," Broadcasting & Cable 39 (Apr.3, 1995).

[10]One commenter in Docket CS 94-48, the Video Competition proceeding, has advised the Commission that as many as 84% of all television homes have videocassette recorders today. See 1994 Video Competition Report, 9 FCC Rcd at 7510.

competition and 150 channels of video programming[11] to every single market in the 48 contiguous United States (herein referred to as the "continental U.S.").[12] Although high powered DBS service was initiated less than a year ago, the one millionth DSS™ receive system (necessary to receive the DirecTv and USSB services) was shipped in April, 1995. See Hillebrand, "Sony Prices DBS Systems at $749," Satellite Business News 1, 30 (May 10, 1995). Primestar Partners, L. P. ("Primestar"), which offers a medium-power DBS service, has indicated that its goals are to have 400,000 units installed by the end of April, 1995, and one million installed by the end of the year. See "Primestar Says New TV Commercials Popular," Satellite Business News (May 10, 1995). As the Commission's First Report in CS Docket No. 94-98, Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992, ("1994 Video Competition Report"), 9 FCCRcd 7442, 7475, ¶66 (1994), noted, demand for DBS receive equipment exceeds the supply. The new service can only be expected to expand as new service providers launch their services and additional equipment manufacturers begin selling systems.[13]

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[11]A copy of the current offerings on DirecTv and USSB is attached as Exhibit 2 hereto.

[12]The Commission notes in the FNPRM at 51, no. 142, that the availability of home satellite dishes may be limited by zoning regulations and homeowner association rules. However, the Commission recently initiated a proceeding (IB Doc. No. 95-59) in which it proposes to change its policies on federal preemption of local land-use regulations that inhibit access to satellite communications. Also, the satellite industry is working on this problem and has been successful in convincing at least one community to change its ordinances once its officials actually saw the 18 inch DBS antenna.

[13]SONY recently announced that it will offer three DBS receive systems. See Communications Daily (May 10, 1995), at 12; "Sony Prices DBS Systems at $749,"

The publication Sky Trends: DTH Annual Report April '95, 2 (1995), published by the Satellite Broadcasting Communications Association and Media Business Corp., reports that, in the first three months of 1995, direct-to-home ("DTH") satellite services passed the three million subscribers mark, with C-Band services accounting for 2,277,000, DSS™ (high power DBS) accounting for over 500,000, and Primestar accounting for over 330,000. The publication quotes industry observers as predicting that 1995 sales could top $3.5 billion and subscribers could exceed 5 million.

Wireless Cable, too, has grown dramatically even since the OPP Paper. Indeed, a recent issue of Broadcasting & Cable (May 1, 1995), carried on its cover the message, "After 22 Years, an overnight sensation, MMDS A.K.A. Wireless Cable." The issue's lead story, which was on wireless cable, opened with the sentence, "[t]hese are heady days for wireless cable operators." See "MMDS (wireless cable): A Capital ideal," Broadcasting & Cable 16 (May 1, 1995). The article reported that Pacific Telesis (PacTel) last month[14] paid $175 million for the stock and debt of the nation's fourth largest wireless operator,[15] and, in March, Bell Atlantic and Nynex

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Satellite Business News 1, 30 (May 10, 1995).

[14]See also "PacTel joins wireless migration," Broadcasting & Cable 35 (Apr.24, 1995).

[15]According to the same story, PacTel decided to invest in the wireless business, even though it also is busy developing a broadband network that could offer video service by 1998 or 1999. PacTel expects to have 5 million homes hooked up to its network in San Jose, Los Angeles, Orange County, and San Diego by the year 2000; but the company wanted to get into the market more quickly. PacTel plans to offer 100 channels of digital programming on its wireless cable system by late 1996. It believes that with wireless cable it will be able to reach 2.3 million additional homes that would not be reached by its planned broadband network. "MMDS (wireless cable): A Capital ideal," Broadcasting & Cable 16,18 (May 1, 1995).

invested $100 million in another of the top ten wireless cable operators, with an option to purchase 45% of the company for a total investment of $300 million.[16] That company in turn plans to merge its system with another top ten company. Id. The report also stated that there are now seven major publicly traded wireless companies with a collective annual growth rate of about 175,000 new customers a year. Id. Most systems have a channel capacity of 33, which could be expanded up to 250 with digital technology. Id. at 16-18.

Moreover, hardly a day passes that one does not hear of new alliances, deals, and joint ventures being formed whereby video programming, including interactive programming, will be provided over telephone networks, computer online services[17], and CD ROM. Americans are no longer limited to the few options they had in 1964. They are no longer receiving news and information by newspaper, television, and radio alone. They have numerous, multichannel and multimedia sources of information available; and the sources they have are multiplying at an ever increasing pace.

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[16]See also "Bell Atlantic, Nynex purchase CAI wireless systems," Broadcasting & Cable 40 (Apr.3, 1995).

[17]See, e.g., "Dream date: Microsoft and Dream Works SKG, "Broadcasting & Cable 42 (Mar. 27, 1995); "Disney, Baby Bells about to be partners," Broadcasting & Cable 38 (Apr.3, 1995); "Apple pushing into interactive TV market," Broadcasting & Cable 45 (Apr. 17, 1995); "Bells close Disney video services deal," Broadcasting & Cable 33 (Apr. 24, 1995); "CompuServe to deliver CNN programming to PCs, Broadcasting & Cable 34 (May 1, 1995); "Microsoft moves closer to interactive TV reality," and "Coming soon to a cable system near you: Microsoft online," Broadcasting & Cable 70,74 (May 8, 1995). Broadcasting & Cable now has a separate section, "Telemedia Week, the Interactive World of Video, Voice and Data" in each weekly issue.

Thus, artificial ownership restrictions on local television stations are obviously no longer necessary or justifiable to foster competition and diversity in the provision of video programming; but, rather, marketplace conditions and technological advances cannot help but ensure increased competition and diversity, a necessary result of the dramatic technological and marketplace changes facing television broadcasters. If the Commission is committed to preserving free over the air television broadcasting, it must ease up on the restrictions it places on television broadcasters that hinder their ability to compete with the multiplicity of other services available to advertisers and consumers.

Obviously Congressional leaders agree that it is time to amend the television ownership rules. The Commission need not wait for action on this Bill. The Commission has the authority to take action and amend its regulations immediately. There is no danger today that any local broadcast licensee could obtain an undue concentration of economic control in the local advertising market, video program production market, or video program delivery market.

III. Permitting Television Duopoly Will Have No Adverse Effects on Competition

In its Notice of Inquiry, 6 FCC Rcd 4961 (1991) (NOI), in this (MM Docket 91-221) proceeding, the Commission acted in response to its Office of Plans and Policy's Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, DA 91-817, 6 FCC Rcd 3996 (1991) ("OPP Paper"), in which the Commission's staff documented the uncertain future facing over-the-air television broadcasters, particularly smaller-market, independent, and UHF stations. As a result of comments received in response to the NOI, the Commission proposed a number of policy and rule changes, including changes in its television ownership rules, in a Notice of Proposed Rulemaking, 7 FCC Rcd 4111 (1992) ("NPRM"), in 1992. Despite the record established in that proceeding, the Commission's recent FNPRM proposes "a new analytical framework within which to evaluate" its ownership rules applied to television stations.

With respect to the local ownership rule, the Commission's FNPRM analysis looks at how relaxation of the rule will affect competition in the market for delivered video programming, the market for advertising, and the market for video program production, as well as the effects on diversity. As discussed below, CCA believes with respect to competition that the relevant analysis should be an antitrust analysis that focuses on the market for advertising. Even so, CCA addresses the program delivery and program production markets as well.

A. Effects on the Market for Delivered Video Programming.

With respect to the market for delivered video programming, the Commission has concluded that broadcasters effectively compete with each other, with public broadcast television stations, with cable system operators, with wireless cable operators, and possibly with DBS operators serving their "local" market. FNPRM at ¶ 106. CCA agrees that all of the above services compete with local television broadcasters, as discussed in section II, supra, but disagrees with the decision to exclude videocassette recorders (VCRs). FNPRM at ¶ 30. The Commission notes that VCR penetration has continued to grow,[18] but the Commission has concluded that VCRs "do not provide a complete schedule of video programming and so are treated as sufficiently different as to suggest that perhaps they should not be included at this time." Id. at ¶ 30.

CCA disagrees. VCRs are utilized to provide alternatives or substitutes to what the viewer could otherwise watch. The viewer can rent programming from a videocassette rental store, thereby inexpensively obtaining programming that he/she might otherwise have had to obtain through broadcast, cable, or other pay service. The VCR also enables the viewer to expand his/her viewing options by permitting the user to tape one program while viewing another. VCRs are not just used to record a program for viewing at a more convenient time. See Id. at 15, n. 54. If that were the case, there would be no Blockbuster Video and similar stores. Moreover, in its 1994 Video Competition Report, 9 FCC Rcd at 7510, the Commission noted that it previously found that nationwide revenues from the sale and rental of videocassette tapes exceeded the revenues for basic cable service and concluded that VCRs, combined with broadcasting or other over-the-air video delivery systems, offer an alternative that may act as a partial substitute for cable services. Thus it would seem that the Commission's own conclusions support inclusion of VCRs in the market.

Also with respect to the market for delivered video programming, the Commission has requested information concerning the economies that may be

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[18]The 1994 Video Competition Report, 9 FCC Rcd at 7510, noted that Time Warner's comments reported that VCRs were in nearly 84% of all U.S. television households.

achieved by the common ownership of more than one station in a market. CCA discusses these economies and how such cost savings have resulted in better programming to the public infra.

B. Effects on the Market for Advertising.

CCA believes that the FCC's competition objectives would be better served by applying standard antitrust principles and methods to analyzing broadcast television station acquisitions, rather than using ad hoc technical rules, such as a Grade B or Grade A prohibited overlap standard. Relying upon the stations' Grade A or Grade B contours to determine the relevant markets ignores the competitive conditions in the actual markets within which those stations operate and compete, which for most television stations would be their Designated Market Area (DMA), as defined by A.C. Nielsen. Rather than relying upon such technical factors, the Commission should adopt an antitrust approach in addressing its competition objectives, that concerns itself with disallowing combinations that create undue market power and allowing those that do not. When a traditional antitrust analysis is used, it is clear that, even under a worst case scenario, there would be no harm to competition if the changes proposed by CCA are adopted.

While the Commission's FNPRM proposes examining three separate relevant markets, advertising, video program production, and video program delivery, the relevant product market is really the local advertising market. That is the market that clearly drives the stations' competitive behavior, since stations earn income only from advertising sales. All advertising media create a product - an audience - that is marketed to advertisers. The production and delivery of video programming, whether news or entertainment, are only the means by which stations "produce" the audience that they in turn "sell" to advertisers, in the same way that other non-media firms assemble various inputs to create a product that is sold to their ultimate customers.

Broadcast television stations compete, as suppliers of advertising time, for the patronage of local, regional, and national advertisers. Unlike their competitors in newspaper, direct mail, and outdoor advertising, broadcast stations have only a finite number of advertisements or products to sell. In CCA's experience, broadcast advertising and direct mail are fairly close substitutes, as are print advertising and direct mail; whereas, broadcast and print advertising, while substitutes for one another, have a somewhat smaller estimated elasticity of substitution. It is widely recognized that advertisers' expenditures with newspapers have declined over time, while those on television, particularly cable television, have increased.[19] Given the number and variety of media competing for the local advertising dollar, it is obvious that allowing two single channel television stations to share common ownership in the same market will not impair competition.

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[19]See also McClellan, "Reports of TVB's death exaggerated," Broadcasting & Cable 71 (Apr. 3, 1995), in which it is reported that the television industry "is poised, for the first time, to surpass the newspaper industry in total advertising dollars" and that television is making inroads on retail advertising, where television traditionally has lagged. In fact, Broadcasting & Cable recently reported that in 1994, total television advertising, including cable TV, surpassed total newspaper advertising for the first time and that indications are that television will continue to widen the gap in the years ahead. See "Television advertising tops newspapers," Broadcasting & Cable 62 (Apr. 17, 1995).

C. Effects on the Market for Video Program Production

The Commission's FNPRM raises the concern that the local program production market could be affected if Commission relaxation of the local ownership rules permitted one or a few broadcast station owners to exercise significant market power in the purchase of video programming. CCA does not believe, given the number of outlets available, that permitting television licensees to own two stations in their market would give a licensee in any given market sufficient market power to affect significantly the local program production market, since the local owner still would have only two stations and would likely not run the same programming on both stations. The local market is affected where a competitor owns more than one station and is bargaining as a national group owner for programming against a local station owner. Having one or two stations in one local market will not give the local station owner sufficient market power to outbid the larger group owner (or an alternative multichannel video service provider) who has more markets to offer the programmer. Amending the local ownership rule for television would clearly have no adverse impact on the local video program production market.

IV. Permitting Television Duopoly Will Have No Adverse Effects on Diversity

The FCC's local ownership rule is no longer necessary to ensure diversity in programming services. As is obvious in the discussion in Section II, supra, changes in technology, including video signal compression and the development of services that no one conceived of in 1964, have already resulted in increased diversity in programming. Moreover, increased group ownership also encourages diversity. Group-owned stations, managed in common, have a greater incentive to program for different niche audiences with distinct programming rather than targeting the same viewers as other separately-owned stations in a market. See Notice of Proposed Rule Making in MM Docket No. 91-140, 6 FCC Rcd 3275, 3276 (1991).

As demonstrated above, changes in the local ownership rule are necessary to afford television broadcasters some competitive relief vis-a-vis cable and other existing and expanding media. Group ownership also serves the public interest in this regard. Indeed, as the Commission has already found:

> "group ownership may lead to economies of scale, particularly given group owners' ability to consolidate management, bookkeeping, secretarial, sales and programming personnel for a number of stations, and to engage in group advertising sales and group program development and purchases."

Id.[20] The Commission has also recognized that group ownership (1) may foster news gathering, editorializing and public affairs programming, and (2) may lead to the development of independent programming networks, and that (3) the economies of scale could lead to increased resources being available to improve the responsiveness, diversity, and quality of programming. Id.

While the Commission recently seems to question its own previous findings and assumptions, CCA knows those findings and assumptions to be correct. If the

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[20] The OPP Paper agreed that revision of the ownership restrictions could permit economies of scale and reduced costs or improved service. OPP Paper, 6 FCC Rcd at 4103.

Commission wants to see first hand how common ownership and/or joint operation of television stations will result in economies that will translate to more diverse programming, the Commission should consider: instances where more than one radio station is owned within a market; instances where the Commission has waived its one-to-a-market rule to permit radio-television cross ownership (or where grandfathered TV-radio combinations exist); and instances where existing television LMAs have resulted in two television stations in a market sharing resources that one or both could not have afforded alone. CCA offers here in and in Sections V and V1 infra, examples of how diversity objectives have been served by common operation of stations.

With radio combinations, CCA has noted diversity objectives being achieved in different ways. One vivid example of the way in which common operation of three radio stations in a market has increased diversity in radio programming is provided in the Washington metropolitan area by Capital Kids' Radio Co. (CKRC), the licensee of three AM radio stations in the Washington/Baltimore metropolitan area. The three stations, WKDL, Silver Spring, Maryland, WKDB, Towson, Maryland, and WKDV, Manassas, Virginia, operate with common facilities and resources. Those economies allow CKRC to offer a unique radio program service that it could not otherwise afford to provide -- children's radio, offered 24 hours a day and targeted to audiences under 12 years of age. Since children under 12 are not reflected in Arbitron data, the sale of advertising time on the stations is very difficult. By owning three AM stations that span the market, CKRC could attempt to compete with other stations in the market and still offer a valuable but "commercially challenging" program service.

Broadcasters who have been able to combine radio and television staffs and facilities have also experienced economies of operation that have ensured the survival of broadcast stations and enabled the stations to provide news and other programming that would not otherwise be available, as is demonstrated by the experience of CCA principal Thomas Galloway and the Mansfield, Ohio, illustration in Section V infra. Rather than speculating about what will happen to diversity when two television stations combine operations, the Commission should consider actual examples of how television LMAs (which have resulted in common operations but not common ownership) have resulted in television stations being able to go on air, being able to keep from going off air, being able to offer local news and public affairs programming, and generally being able to contribute to program diversity in their markets.

The Commission has raised additional issues that should be addressed: if it relaxes its local ownership rule because other media, including cable and newspapers, will provide sufficient diversity, how should it take into account the fact that some viewers are unable to subscribe or to acquire special equipment; to what extent do fee-based sources and outlets for video programming provide true alternatives to over-the-air television for purposes of ensuring diversity. The Commission should not be overly concerned with these issues. Every medium has a cost. To view television, one must have a television set. (For many consumers, to view television one must also have cable in order to get good reception of television channels.) For the person who cannot afford cable, the video cassette rental stores offer entertainment and nonentertainment programs at a per program cost that makes them affordable. Of course, that person would need to purchase a VCR. To view anything there is a cost involved. As additional services become available offering essentially the same programming, prices may drop even further to a point where they will be more affordable to people who choose at this time not to spend their money on cable or another multichannel video service.

In any event, it appears that consumers who the Commission might believe would not be able to afford cable are in fact subscribing to cable. As Capital Cities/ABC Inc. (ABC) pointed out in the comments it filed on March 7, 1995, in MM Docket 94-123, the Prime Time Access Rule proceeding, while cable subscription ratios do increase with annual income, almost half (46%) of the households with annual income below $10,000 nevertheless subscribe to cable. ABC Comments in MM 94-123 at 19. Obviously those low-income consumers do not believe that the cable rates are prohibitive. The consumer who wants cable will subscribe, if cable is available.[21] Furthermore, the Commission cannot assume that the difference between the numbers of homes that subscribe to cable and the number of homes that are passed by cable represents people who cannot afford cable. It is clear that

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[21] If cable is not available, DBS certainly is. With the entry of Sony as a manufacturer, it is anticipated that DSS™ receiver costs will soon drop. See 1994 Video Competition Report, 9 FCC Rcd at 7475 & n. 158 (and Comments filed by DirecTV and USSB in Docket CS 94-48 (commenters believe costs of equipment will drop to half the current costs).